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Supreme Court of the United States

OCTOBER TERM, 1932.

W. I. BIDDLE, WARDEN OF THE UNITED
STATES PENITENTIARY AT LEAVEN-
WORTH, KANSAS, APPELLANT,

VS.

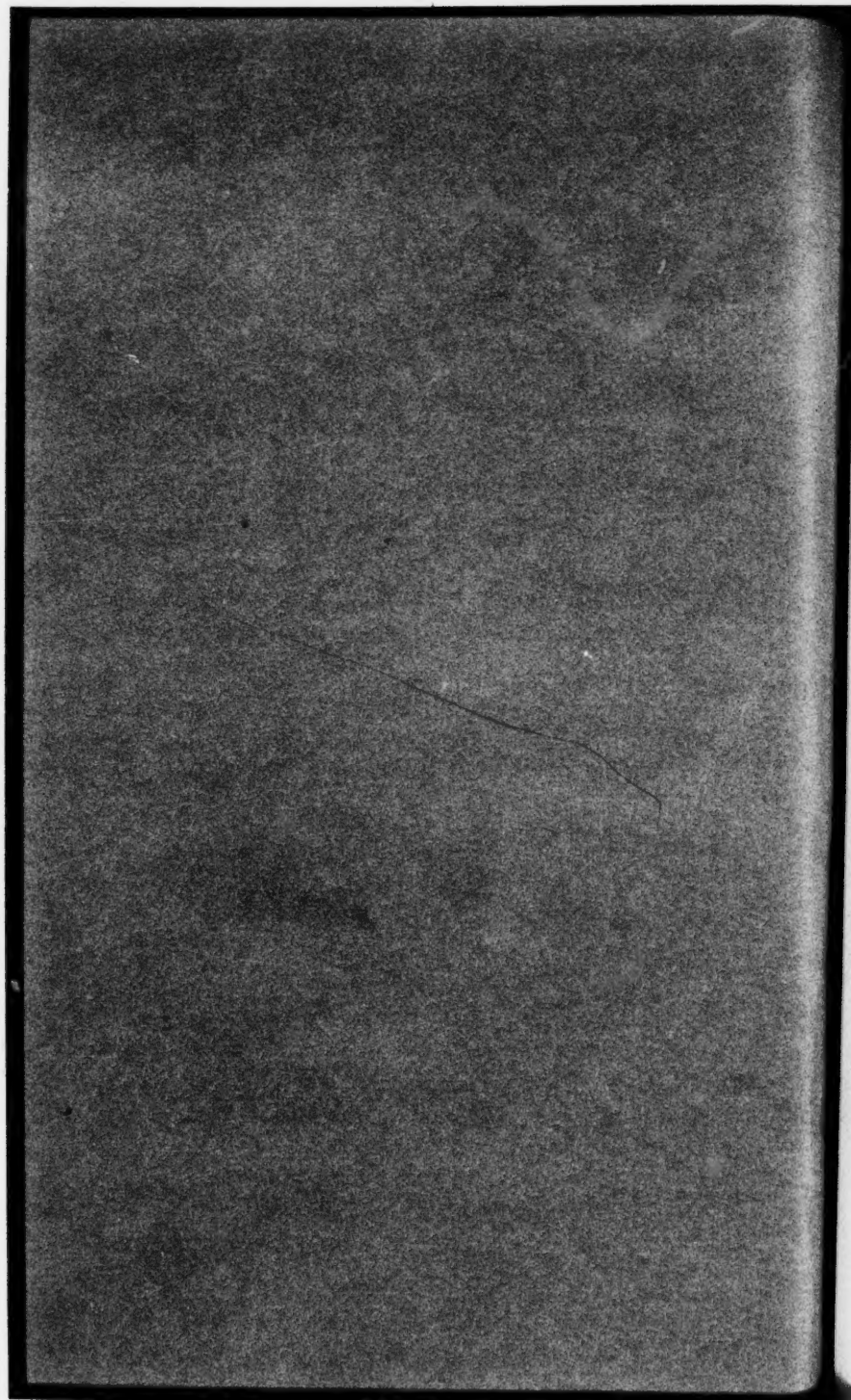
ISADORE LUVISCH, APPELLEE.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

APPELLEE'S BRIEF.

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(29709)



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No. 96.

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I.

The question submitted by the United States Circuit Court of Appeals, (Eighth Circuit), by its certificate to this court is as follows:

STATEMENT OF FACTS.

(a)

Isadore Luvisch, appellee, was indicted in the District Court of the United States for the Eastern District

of Michigan, in three counts, to which he entered a plea of guilty and thereupon was sentenced to confinement in the United States Penitentiary at Leavenworth, Kansas, for five years. While in prison, he applied to the District Court of the United States for the District of Kansas, for a writ of habeas corpus and, upon a hearing of the petition, a judgment was entered discharging him from imprisonment on the ground that none of the three counts in the indictment, to which he entered a plea of guilty and was sentenced, constituted a violation of any law of the United States. The Government appealed from the judgment rendered by the United States District Court, Eighth Circuit. The Circuit Court of Appeals reversed the judgment discharging the petitioner and, on filing motion for a rehearing, same was sustained and judgment of reversal set aside.

(b)

The indictment, omitting jurisdictional matters, is as follows:

"That heretofore, to-wit: On the 25th day of October, in the year of our Lord, one thousand nine hundred and twenty, at the City of Detroit, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court,

Isador Luvish, George Walt, Vincent Bow, Sam Leider and (Same) Weinberg, all late of the City of Detroit, aforesaid, and each of them, hereinafter called the defendants, did then and there unlawfully, wilfully, feloniously, and knowingly, and without lawful authority, cause and procure to be made and engraved a certain zinc

half tone plate in the likeness and similitude of certain plates and impressions designated by a certain foreign government, to-wit: The Dominion of Canada, for the printing of the genuine issues of certain obligations and securities of the said foreign government, to-wit: certain Inland Excise Stamps of the denomination of one cent, bearing the following words and figures to-wit: the numerals "1912" at each end and in the center of said stamp; and the words "Certified manufactured in the year"; and the signature of, to-wit: "J. W. Vincent," and a large scroll numeral "1," all on the left side of the center of said stamp, and in the center thereof the word "Ottawa" above the numerals "1912," and beneath said numerals the word "Canada," and on the right of the center of said stamp appears first the word "cent" and then "and bottled in bond under excise supervision, Deputy Minr. "Inland Revenue"; * * *

Second Count.

* * * on the 25th day of October, A. D. 1920, at the City of Detroit, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, the said Isador Luvisch, George Walt, Vincent Bow, Same Leider, and Sam Weinberg, all late of the City of Detroit aforesaid, and each of them hereinafter called the defendants, did then and there unlawfully, wilfully, feloniously and knowingly and without lawful authority have in their possession and custody and under their control, a certain plate, to-wit: a zinc half tone made in the likeness and similitude of certain plates and stamps designated for the printing of certain foreign obligations and securities, to-wit: Genuine Inland Excise Stamps of the denomination of one cent, bearing the numerals "1912" at each end and in the center of said stamp, the words "certified manu-

factured in the year," and the signature of to-wit: "J. W. Vincent," and a large scroll numeral "1," all on the left side of the center of said stamp, and in the center thereof, the word "Ottawa" above the numerals "1912," and beneath said numerals the word "Canada," and on the right of the center of said stamp appears first the word "cent" and then "and bottled in bond under excise supervision Deputy Minr "Inland Revenue" issued and authorized by a certain foreign government, to-wit: The Dominion of Canada, from and by means of which said plate the said obligation and securities above described, to-wit: one cent inland excise stamps might be printed; * * *

Third Count.

"That heretofore, to-wit: on the 25th day of October, A. D. 1920, at the City of Detroit, in the Southern Division of the Eastern District of Michigan, and within the jurisdiction of this Honorable Court, the said Isador Luvisch, George Walt, Vincent Bow, Sam Leider, and Sam Weinberg, all late of the City of Detroit aforesaid, and each of them, hereinafter called the defendants, did then and there unlawfully, wilfully, feloniously and knowingly and without lawful authority, sell a certain number of counterfeit prints, to-wit: twelve hundred, made in the likeness and (similitude) of a certain genuine obligation and security of a certain foreign government, to-wit: The Dominion of Canada, said prints being in the likeness and similitude of certain Inland Excise stamps of the said foreign government, to-wit: The Dominion of Canada, of the denomination of one cent, bearing the following words and figures, to-wit: the numerals "1912" at each end and in the center of said stamp; and the words "Certified manufac-

tured in the year"; and the signature of, to-wit: "J. W. Vincent," and a large scroll numeral "1" —all on the left side of the center of said stamp, and in the center thereof the word "Ottawa" above the numerals "1912" and beneath said numerals the word "Canada," and on the right of the center of said stamp appears first the word "cent" and then "and bottled in bond under excise supervision, Deputy Minr. "Inland Revenue";

* * * * *

(c)

The question submitted by the Circuit Court of Appeals is as follows:

"Do the counts of the indictment, or any of them, charge the commission of a criminal offense against the United States as in violation of Sections 147 and 161 of the Act of March 4, 1909 (35 Stat. 1088) known as the Penal Code of 1910?"

As stated in the certificate of the Circuit Court of Appeals, it will be noticed that each of the three counts is based on the same facts and that it is only necessary to consider the first count. For, if it does not state facts constituting a crime under the laws of the United States, then neither of the other counts in the indictment do.

BRIEF AND ARGUMENT.

II.

Sections of statutes referred in certificate and extracts from opinions of courts answering question submitted to this court.

(a)

Section 147 defines obligations and other securities of the United States. It says:

"The words 'obligation or other security of the United States' shall be held to mean all * * * stamps and other representatives of value of whatever denomination, which have been or may be issued under any Act of Congress."

Section 161 reads as follows:

"Whoever * * * shall have control, custody or possession of any plate * * * from which has been printed or may be printed any counterfeit note, bond, obligation or other security in whole or in part, of any foreign government, bank or corporation shall be guilty of a criminal offense."

The same section also makes it a criminal offense to make or engrave such a plate designed for the printing of genuine issues of the obligations of any foreign government, bank or corporation, or to print or, in any manner, make any print or impression "in the likeness of any genuine note, bond, obligation or other security or any part thereof of any foreign government, bank or corporation."

(b)

The Honorable John C. Pollock, Judge of the United States District Court for the District of Kansas, in passing on the question certified to this court on motion to dismiss in a memorandum opinion in part said:

"The question presented on this application therefore is this: Is the paper or 'inland excise stamp' described in the several counts of the indictment, if genuine, as a matter of law such an obligation or security of the Dominion of Canada as is contemplated by the law-making power of the enactment of Section 161 of the Penal Code? If so, petitioner violated the law, by his plea of guilty confessed such violation, and is justly undergoing punishment. On the other hand, if the paper described in the indictment as an 'inland excise stamp' does not, if genuine, in any just sense, fall within the general classification made by the law-making power in the enactment of said Section 161, it then follows the act of defendant admitted by him to have been done by his plea of guilty entered, confessed no violation of the law for which there was any jurisdiction or power in the court to punish him, and he must be released.

"Now, while the law-making power has in section 147 of the Code defined what constitutes an 'obligation or other security of the United States' the Congress has not attempted the making of any definition or classification of the obligations or securities of a foreign government for reasons perfectly obvious, leaving any such definition to be either gathered from the commonly accepted meaning of the terms employed or to be arbitrarily defined as the law-making power of such foreign government might desire to provide in its laws. This being true, I am inclined to the opinion at this time the paper described in the indictment as an 'in-

land excise stamp' constitutes in no just sense either an obligation or other security of the Dominion of Canada within the generally accepted meaning of these terms."

And again on the merits, in a memorandum opinion in part said:

"Do the inland excise stamps described in the indictment fall within the class of documents named in the statute as a 'note, bond, obligation or other security'? If this question related to an instrument of this government, the answer would be easy to find for the Congress has by law arbitrarily defined in what securities or obligations of this government consist, as follows:

"Section 147. The words 'obligation or other security of the United States' shall be held to mean all * * * stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress.

"However, the Congress has not attempted to define in what the 'notes, bonds, obligations or other securities' of foreign governments consist. Section 220 of the Penal Code was enacted for the purpose of making it an offense to counterfeit the postage stamps of a foreign government. The inland excise stamps described in the indictment cannot in any sense fall within that statute. Therefore, as there is no statutory definition of the term 'note, bond, obligation or other security' employed in section 161 of the Penal Code, and as a mere stamp or receipt does not in my judgment fall within the commonly accepted meaning of the term 'note, bond, obligation or other security' I am of the opinion the indictment alleges no public offense against petitioner as to either or any of its counts. While perhaps this court will not take judicial notice of the laws of a foreign country, and while it

was within the power of the Canadian Government by arbitrary law to have defined in what its 'notes, bond, obligations or other securities' should consist, a search of the laws of that country reveals no act making such arbitrary definition of such terms."

(c)

Judge Trieber, sitting as a Judge in the United States Circuit Court of Appeals, Eighth Circuit, in the majority opinion, of the court, which, as stated, was set aside, in part said:

"Section 147 does not attempt to define 'securities or obligations' of a foreign government, but only 'securities or obligations of the United States.' This section is therefore inapplicable to the indictment in the instant case. The indictment in express language charges that the Inland Excise Stamps described therein are 'obligations and securities' of the Dominion of Canada. What the laws of Canada declare these Inland Excise Stamps, which petitioner is charged with counterfeiting, we cannot judicially know, as the courts of the United States cannot take judicial notice of the laws of foreign nations, but they must be proved at the trial by competent evidence."

(d)

And Lewis, Circuit Judge in a dissenting opinion says (*Italics ours*):

"This is equivalent to putting the word 'stamps' into those sections defining the offense of counterfeiting obligations or other security of the United States. So far as we are advised, Congress has not declared it a crime to counterfeit or knowingly use counterfeited revenue stamps of any

foreign government. The indictment against the three petitioners for the writ goes on the assumption that the Inland Excise Stamp of the Dominion of Canada is 'an obligation or other security' of that country and charges that defendants counterfeited it; but the stamp is set out *and it shows on its face that it is not an obligation or security. This seems too clear for argument, is not denied by appellant, is sustained by authorities cited in appellee's brief, and is impliedly if not expressly conceded by my associates.* As I understand them, they in effect say that an inland excise stamp may have been made an obligation or other security of the Dominion by its laws, and if so, the prosecution would have been able to prove it on trial, and the plea of guilty admitted it. Granted all of this, I still dissent. For the proposition imports into the Congressional Act a foreign law (statutory or judicial decisions) as an element of the definition of the crime not found in the statute. We have, then, judgment and sentence of guilt of a statutory crime, the definition of which is found in part in the Congressional Act and in part in the laws of a foreign country. This seems to be demonstrated by other sections of Chapter 7, to which attention has been called, in this way: Other sections make it an offense to counterfeit an obligation or security of the United States. But Congress knew, as I think all must know, that an excise stamp is not a note, bond, obligation or other security; hence, it appreciated the necessity of declaring that an 'obligation or other security of the United States' means or includes stamps, in order to bring them within the definition of the crimes therein set out. Stamps, when issued under any Act of Congress, were thus made a subject-matter for counterfeiting, as much so as if they had been named in the sections defining the offenses. But the inclusion of stamps as an obligation or other security confined them to do-

mestic stamps. Not so with foreign stamps, they are not mentioned. They could have been expressly named in Section 161 as a part of the definition of the crime or it could have been declared by Congress that the words 'obligation or other security of any foreign government' shall be held to mean all stamps which have been or may be issued under its authority. Nothing of the kind was done, either expressly or by necessary implication. A contrary implication that Congress did not intend to include foreign stamps in the crime defined by Section 161 necessarily arises. The fallacy of resorting to the laws of a foreign country for the definition, in whole or in part, of a statutory crime seems to be obvious, and I do not agree that it may be done."

III.

The act charged in the indictment of counterfeiting the Inland Excise Stamp of the Dominion of Canada does not charge any offense against the laws of the United States, for the reason that said stamp is not an obligation or security of a Foreign Government and such act does not come within the purview of Section 161 of the Penal Code.

(a)

Obligation or Security of a Foreign Government Not Defined in Statute—

It is our contention that Section 161 does not make it an offense to counterfeit *an inland excise stamp of a foreign government*. The terms "obligation or other security, in whole or in part, of any foreign government" do not embrace or apply to a revenue stamp.

The charge here is that the petitioner counterfeited an inland excise stamp of the Canadian Government. Section 147 of the Penal Code defines the words "obligation or other security *of the United States*" to mean:

"The words 'obligation or other security of the United States' shall be held to mean all * * * stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress" (This Section was formerly 5413 of Revised Statutes).

A moment's inspection will reveal that the arbitrary definition given in Section 147 is confined to the phrase "obligation or other security *of the United States*." *There is no arbitrary definition anywhere in the Federal Statutes of an "obligation or other security of a foreign government."*

(b)

Rules of Construction—

It is a fundamental rule in the construction of statutes that penal statutes must be construed strictly.

Aicardi v. Alabama, 19 Wall (U. S.) 635.

Martin v. U. S., 168 Fed. 198.

U. S. v. Louisville, 165 Fed. 936.

U. S. v. 20 Boxes of Corn Whiskey, 133 Fed. 910.

A strict construction of a statute is a close adherence to the literal or textual interpretation and a case is excluded from its obligation unless the language of the statute includes it. The definition which is purely an arbitrary one, given in Section 147 to the words "obliga-

tion or other security of *the United States*," will not be extended by the court to phrases other than the precise one to which the arbitrary definition is given. To do so would be to violate one of the best settled and most fundamental rules in the interpretation of statutes and especially penal statutes. The words "obligation or other security in whole or in part of any foreign government, bank or corporation" are to be interpreted according to the meaning, which those words *ordinarily have* and which has been conferred on them by numerous judicial decisions.

In the interpretation of statutes, words in common use are to be construed in their natural, plain and ordinary signification.

Lake County v. Rollins, 130 U. S. 662.

U. S. v. Colorado Railroad Co., 157 Fed. 321.

Brun v. Mann, 151 Fed. 145.

Wadsworth v. Boysen, 148 Fed. 771.

Shulthis v. MacDougal, 162 Fed. 331.

Words and phrases used in the statutes and words as may have acquired a peculiar and appropriate meaning in the law, must be interpreted in accordance with their received meaning and acceptance.

U. S. v. Jones, 26 Fed. Cases. No. 15494.

Statutes are to be construed with reference to the principles of common law enforceable at the time of their passage and words used in a statute, which have a definite and settled meaning at common law are presumed to be employed in the same sense.

U. S. v. Trans-Missouri Freight Association,
58 Fed. 58.

The words "note, bond, obligation or other security of any foreign government," as appearing in Section 161, are to be construed and their meaning derived from ascertaining what those terms customarily mean under judicial decisions.

In accordance with the maxim *expressio unius est exclusio alterius*, where a statute enumerates the things upon which it is to operate or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned.

Johnson v. Southern Pacific Co., 117 Fed. 462.

Oxford Iron Co. v. Slafter, 18 Fed. Cases No. 10637.

The arbitrary definition given to a certain phrase in Section 147 is not to be extended in its operation to *other phrases which are not the same*, but which may contain a word or words appearing in the phrase to which an arbitrary definition is given, unless there is something in the statute to expressly warrant.

By the rule of *ejusdem generis*, where general words following the enumeration of particular classes of things, the general words will be construed as applicable only to things of the same general nature or class, as those enumerated. The particular words are presumed to describe certain species and the general words to be used for the purpose of including other species of the same genus. Thus the words "or other security," following after the words "note, bond, obligation," simply

means instruments of the same general class as "notes, bonds or obligations."

U. S. v. Irwin, 26 Fed. Cases. No. 15445.

(c)

Meaning of Words "Obligation or Security"—Not "Stamps"—

The meaning of the words "obligation or other security, in whole or in part of any foreign government, bank or corporation," appearing in Section 161 is to be determined etymologically and from the judicial meaning of same. Webster defines the word "obligation" to mean "in law a bond to which a penalty is annexed on failure of due performance."

In 29 Cyc. 1308, an obligation is said to be "a binding or state of being bound in law; something which binds or obliges us to do or not to do some act; the chain of the law by which we are necessarily bound to make some payment according to the law of the land; an instrument in writing whereby a party is bound in law or bonds commonly called a writing obligatory."

In *Sinton v. County of Carter*, 23 Fed. 535 (District Court of Kentucky) it is said:

"Obligation is a generic word and includes all kinds of *contracts* by which contracting parties bind themselves."

In *Blair v. Williams*, 4 Litt. (Kentucky) 35, it is said:

"The term obligation, whether we consult its etymology or its general acceptance in our own

language will be found to signify a ligament, or tie, something which binds or obliges us to do or not to do some act. It is derived immediately from the Latin substantive *obligatio*, which is from the verb *obligare*; to tie, to bind; to oblige; and is used in the same sense that the English words derived from these are universally used and received by all who either speak or write the English language."

In 35 Cyc. 1283, a security is said to be "written assurances for the return or payment of money; evidence of indebtedness."

Mace v. Buchanan, 52 S. W. 505.

Jennings v. Davis, 31 Conn. 134.

Howard Savings Institution v. Newark, 63 N. J. L. 547.

Thayer v. Walthen, 44 S. W. 906.

Duncan v. Maryland, 10 Gill and J. (Maryland) 299.

Webster defines the word "stamp" to be "an official mark on dutiable things."

The thing which is described in the indictment as an "obligation or security of a foreign government" is specifically set out and shows on its face and is so described in the indictment as being an inland excise stamp of the Dominion of Canada. The excise stamp purports to be just what its name says, to-wit, a receipt for the payment of money. The inland excise stamp is, in no just or proper sense, under the well defined meaning of the words "obligation or security," an obligation or security of a foreign government. This language obligation or security of a foreign government, appearing in

our statute, is to be construed with reference to the general system of law of which it forms a part and must, therefore, be interpreted in the light of our customary law.

What the words which are used in Section 161 mean are to be determined according to what those words mean in our language and under our laws, and they are to be construed in their ordinary and common acceptance, unless an intent to give them some other meaning expressly and clearly appears.

(d)

**Instrument Must in Fact
Purport to Bind—**

In *U. S. v. Sprague*, 48 Fed. 828 (District Court of Wisconsin, per Dyer, J.) the question arose where a defendant was charged with having counterfeited an "obligation or security of the United States," which is the phrase which is defined in Section 147, as to whether or not the instrument, which he was charged with having counterfeited, must not have been, in fact, an instrument which, on its face, purported to be signed and executed by someone. The court says:

"The words 'obligation or other security' as herein used seem clearly to imply an executed instrument or at least one on its face purporting to be executed by somebody. In the case at hand, the false or bogus bond bears no signature whatever. It is a mere blank so far as signatures or execution are concerned. Can it then be said to be an obligation or security or to be even a pretended obligation or security? True it is paper made after

the similitude of a United States bond, but it is unexecuted, unsigned by anybody. In that regard, as just observed, it is a blank and there is nothing on its face even a pretense of execution by any person or corporation. The statute was aimed at the issuance or execution, whether real or pretended, of obligations or securities made after the similitude of the obligations or securities of the United States; and I am constrained to believe that what is meant by the language of the section referred to is an instrument that is either in fact executed or purports to be executed by somebody; *otherwise it is not and does not purport to be an obligation.* * * *

"The instrument in evidence is not an obligation or other security, and does not purport to be such because it was never executed or signed by anybody and therefore, it is not such an instrument as the statute covers. In that respect it is no more than a blank piece of paper.

"* * * *Whether the instrument is an obligation or not is a question as to its legal effect.* That is a question for the court and if it is apparent that the alleged fraudulent obligation or security is not an obligation or security at all within the meaning of the statute, it must follow that the conviction cannot be sustained, although the jury have determined that the paper in evidence in its body and general form and style is made after the similitude of a United States bond."

Under the foregoing decision, it cannot be said that the inland excise stamp is any obligation or security (without reference to what its inherent characteristics are), but simply from the fact that it does not purport to be signed or executed by anybody. The foregoing decision is still the law.

In *Wiggins v. U. S.*, 214 Fed. 970, held that, in as much as the Act of 1892 relating to National Banks required each bank to keep on hand a deposit to redeem National Bank Notes, which had once been issued, *whether they were ever signed or not*, that, therefore where defendant was charged with having violated Section 150 of the Penal Code and had in his possession what purported to be a five dollar note of the National Bank currency issued by the National Bank of Beloit, Kansas, and made in the similitude of an obligation or security of the United States, although same was not signed, nevertheless came within the statute. The court cites the case of *U. S. v. Sprague*, *supra*, and other decisions to the effect that an unsigned instrument is not an obligation or security of the United States and places its ruling squarely on the proposition that, by the special act of Congress, as unsigned National Bank note has been made an obligation or security of the United States and can be redeemed.

(e)

**War Saving Stamp Not
An Obligation in Itself—**

In *U. S. v. Rossi*, 268 Fed. 620 (District Court of Oregon), defendant was charged with having altered certain obligations and securities of the United States, to-wit: War Savings Certificates and War Savings Certificate Stamps. The court there held that the stamp was in no proper sense an obligation or security of the United States and only became so when it was attached

to the certificate, thus creating an obligation which could be enforced against the government.

The court says:

"In the light of the act and department regulations provision is made for the issuance of two kinds of documents, namely War Savings Certificates and War Savings Certificate Stamps; but these documents become obligations of the United States *only* when a stamp or stamps shall have been affixed to the certificate and the name of the owner or owners shall have been written upon the certificate. Such certificates when so made up and completed, it may be confidently affirmed, are obligations or securities of the United States within the purview of Secs. 148, 151 and 154 of the Penal Code. *Separately considered, neither the stamp nor the certificate can be deemed such an obligation.*"

The foregoing decisions, relate to obligations and securities *of the United States*, but what is said in them and what they hold clearly shows that an obligation or security of a foreign government does not include an inland excise stamp. They hold that there must be an *obligation* of some kind.

(f)

Opinions Attorneys General—

We find no decisions defining the meaning of the words "obligation or other security in whole or in part of a foreign government bank or corporation." And we find no decisions deciding whether or not an inland excise stamp or a revenue stamp of a foreign govern-

ment is an obligation or other security of a foreign government.

The opinions of the attorneys general are very instructive. The opinions hereinafter quoted clearly hold that properly and generically a stamp is not an obligation or security of the United States and has only become so by virtue of the arbitrary definition placed on those words in Section 147. Moreover, they hold that Section 147 is not to be extended in its application to other sections of the Penal Code, wherein a part of the words defined in Section 147 appear. They also hold that a postage stamp of a foreign government is not an obligation or security of such foreign government.

(g)

**Internal Revenue Stamps
Not Obligation or Security—**

In 14 Op. Atty. Gen. 528, in the communication addressed by George H. Williams, Attorney General to the Secretary of the Treasury, under date of February 15th, 1875, it is said:

"In your communication of Feby. 1, 1875 you ask my opinion on this question: Whether in placing portraits of living persons upon internal revenue stamps there has been an infraction of that portion of the law (Revised Statutes, Sec. 3576) which declares that no portraits shall be placed upon any of the bonds, securities, notes, fractional or postal currency of the United States, while the original of such portrait is living.

"Prior to the enactment of the Revised Statutes it was held, and, as I think rightly held, by the

Internal Revenue Bureau to be lawful to ornament with the effigies of living persons the stamps used by the Government in collecting its internal revenue. *These stamps are not bonds, notes or United States currency of any kind, nor yet are they in the ordinary or in any just sense United States securities.* Congress, however, in Section 5413 of the Revised Statutes has declared that the form of words 'obligation or other security of the United States' shall be held to include all representatives of value issued or to be issued by the Government and in the enumeration of the particulars which by the statutes are embraced by those words stamps are expressly included.

* * * * *

"The form of words above quoted seems to have been chosen to denote generally the things the counterfeiting of which the acts sought to punish, and then by definition all the particulars are swept into it, stamps among the rest. *So then, for the purposes of the act only*—that is to punish the crime of counterfeiting or of falsely altering the paper issues (representatives of value) *of the United States*, and with cognate offenses. I do not find precisely the same form of words as that defined in Section 5413 in any other section (except those cited above) in the same division of the title 'Crimes' or indeed elsewhere in the Revised Statutes.

"These circumstances, viz., the connection in which the section defining the phrase is placed, the marks of quotation referring it to the particular section above cited, the subject matter of those sections, and the fact that the same form of words is not found except in those parts of the law which have to do with crimes, and particularly the crime of forgery, warrant the conclusion that beyond those parts of the Revised Statutes the wide significance given by Section 5413 to the words 'ob-

ligation or other security of the United States' does not extend. *It was not the intention of Congress except in those parts of the criminal law above indicated, to give the word 'stamps' a meaning, which neither its etymology nor its ordinary use warrants."*

(h)

No Stamp Is An Obligation or Security—

In 22 Op. of Atty. Gen. 40, is an opinion by Attorney General John W. Griggs addressed to the Postmaster General under date of Feby. 11, 1898, it is said in part:

"You having requested my opinion as to the law governing the engraving and printing of United States postage stamps and whether it is necessary for you to advertise for proposals for such work or to have it done at the Treasury Department, I have the honor to advise you as follows:
* * *

"You advise me it has been contended that paragraph 4 of the Act making appropriations for sundry expenses of the Government for the fiscal year ending June 30, 1898 and for other purposes approved March 3, 1877, providing as follows: 'for labor and expense of engraving and printing namely: for * * * engraving and printing notes, bonds and other securities of the United States * * * provided, (1) the work be performed at the Treasury Department; and provided further that it can be done as cheaply, as perfectly and as safely, and all contracts already made shall be carried out' * * * applies to postage stamps and makes it necessary that the engraving and printing of them should be done at the Treasury Department.

"There is no language in the Act of 1877 which would include postage stamps unless it be the words 'other securities of the United States.'

"In the ordinary sense of the word and the sense in which it is used in this section of the law of 1877, *a security is evidence of public debt as a bond or certificate of deposit certificates of stock, etc.* In this sense postage stamps are not investments or securities.

"Reference is made to Section 5413 of the Revised Statutes which is as follows: The words 'obligation or other security of the United States' shall be held to mean all bonds, certificates of indebtedness, national (bank) currency, coupons, United States notes, Treasury notes, fractional notes, certificates of deposit, bills, checks or drafts for money drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any act of Congress.

"And is it contended that the definition there given to the phrase 'obligation or other security of the United States' is to be applied to the Law of 1877, so as to attach to the words 'other securities of the United States' as used in the Law of 1877, the same meaning given to the words 'obligation or other security of the United States' in Section 5413.

"Unquestionably for the purpose for which Section 5413 was inserted within the Revised Statutes stamps would be classified as 'obligations or other securities' wherever those words occur in the immediate context of Section 5413; but in my opinion, the provisions in this section will not apply to and are not a rule of construction for the Act of March 3, 1877. * * *

"It is also of consequence in considering whether Section 5413 is to be extended as a definition to all parts of the Revised Statutes and to all subse-

quent laws passed by Congress, to look at the precise phrase which is defined. The words to which a defined meaning is fixed are 'obligations or other security of the United States.' The phrase is put in quotation marks. This is not the phrase used in the Act of 1877. The words used there are 'other securities of the United States.' It is not identical as a complete phrase. *It is not sound construction to hold that, where by a statute a particular meaning is arbitrarily put upon a certain specified phrase, the same meaning is to be put upon separate parts of the phrase. The statutory meaning insofar as it is artificial and not the natural and usual meaning can be applied only to the exact phrase defined and to the whole of it, not to a selected portion."*

(i)

**Defined Phrase in Sec. 147 Not
Extended to Words Not
Precisely the Same—**

In 26 Op. Atty. Gen. 231, the question was presented to Attorney General Alfred W. Cooley, whether or not under the law the name of a person whose portrait is placed upon postage stamps is necessary to be inscribed below such portrait. His answer is under date of April 13, 1907. It is said in part.

"By the Act of March 2, 1889 (25 Sts. 939, 945) it was provided 'that hereafter the name of every person whose portrait shall be placed upon any plates for bonds, securities, notes and silver certificates of the United States, shall be inscribed below such portrait.' * * *

"However, it has been suggested, that by reason of the definition contained in Section 5413 Revised Statutes, the words securities in the Act of

1889 must be construed as including postage stamps. * * *

"If this construction of Section 5413 is correct it follows that wherever in the statutes of the United States the words 'securities of the United States' occur, those words must have the meaning put upon the words 'obligation or other security' in that section. *I think this is not a correct conclusion.* An examination of the context shows the meaning to be placed upon this expression. * * *"

(j)

We submit, it would make no difference, what the *laws* of Canada *declared* these stamps to be and, *in no event* would it be material what the Canadian *laws declared* these stamps to be.

Does the efficacy of our statute defining a crime rest in the statutory or judicial decisions of a foreign government?

Must the *foreign government*, first hold a particular instrument *to be an obligation or security*, before an offense is committed under the statute? If so, the failure of Canada, for example, to declare its National Bank Notes, "obligations and securities" would be a defense to an indictment under our statute. This is contrary to all reason and authority.

Is it not equally opposed to reason and authority to say that, what Canada has declared (if it has), with reference to these stamps, has any bearing whatever on the issues made by the indictment in the instant case? What it declares these stamps to be or not to be cannot possibly make any difference one way or the other.

A foreign government might declare a picture of its prince or potentate or a calendar or non-negotiable contract or souvenir, or whatever it please, to be an "obligation or security" of such foreign government. Would such declaration thereby broaden the scope of *our* statute?

Again, different governments might declare differently as to the same thing. Thus, to counterfeit the National Bank Notes of Canda might not constitute a crime, while to counterfeit those of France would constitute a crime, depending simply on what the same thing *might be declared to be* by various foreign governments.

We cannot agree that this is either a sound or reasonable interpretation of Section 161.

(k)

A consideration of the Act of which this Section 161 forms a part and of the constitutional authority upon which its enactment rests, conclusively discloses that Congress has not declared acts crimes *depending upon* the condition of law or statutory definitions that may prevail in a foreign country. This statute was declared constitutional in *United States v. Arjona*, 120 U. S. 479. The question came up on a certificate of division of opinion between the justices of the Circuit Court of the United States for New York, where defendant was indicted on three counts under the act in question. Part of the questions certified were whether or not Section 161 is constitutional so far as relates to foreign banks and corporations; whether the counterfeiting within the United

States of the notes of a foreign bank or corporation can be constitutionally made by Congress an offense against the law of nations and whether the obligations of the law of nations, as referred to in the Constitution, includes the counterfeiting of the notes of a foreign bank or corporation or of having in possession a plate from which may be printed counterfeits of the notes of foreign banks or corporations, unless it appears in the indictment, that the notes of such foreign bank or corporation are the money of issue of a foreign government.

"Congress has power to make all laws which shall be necessary and proper to carry into execution the powers vested by the Constitution in the Government of the United States, Article I, Section 8, Clause 18; and the Government of the United States has been vested exclusively with the power of representing the nation in all its intercourse with foreign countries. It alone can 'regulate commerce with foreign nations,' Article I, Section 8, Clause 3; make treaties, and appoint ambassadors and other public ministers and consuls. Art. II, Sec. 2, Clause 2. A state is expressly prohibited from entering into any 'treaty, alliance, or confederation.' Art. I, Sec. 10, Clause 1. Thus all official intercourse between a state and foreign nations is prevented, and exclusive authority for that purpose given to the United States. The National Government is in this way made responsible to foreign nations for all violations by the United States of their international obligations, and because of this Congress is expressly authorized 'to define and punish * * * offenses against the law of nations.' Art. I, Sec. 8, Clause 10.

"The law of nations requires every national government to use 'due diligence' to prevent a wrong being done within its own dominion to an-

other nation with which it is at peace, or to the people thereof; and because of this the obligation of one nation to punish those who, within its own jurisdiction, counterfeit the money of another nation has long been recognized. Vattel, in his *Law of Nations*, which was first printed at Neuchatel in 1758, and was translated into English and published in England in 1760, uses this language: 'From the principles thus laid down, it is easy to conclude that if one nation counterfeits the money of another, or if she allows and protects false coiners who presume to do it, she does that nation an injury.' When this was written money was the chief thing of this kind that needed protection, but still it was added: 'There is another custom more modern, and of no less use to commerce than the establishment of coin; namely, exchange, or the traffic of bankers, by means of which a merchant remits immense sums from one end of the world to the other, at very trifling expense, and, if he pleases, without risk. For the same reason that sovereigns are obliged to protect commerce, they are obliged to support this custom, by good laws, in which every merchant, whether citizen or foreigner, may find security. In general, it is equally the interest and duty of every nation to have wise and equitable commercial laws established in the country.' "

* * * * *

"In the time of Vattel certificates of the public debt of a Nation, government bonds and other government securities, were rarely seen in any other country than that in which they were put out. Banks of issue were not so common as to need special protection for themselves or the public against forgers and counterfeiters elsewhere than at home; and the great corporations, now so numerous and so important, established by public authority for the promotion of public enterprises, were

almost unknown, and certainly they had not got to be extensive borrowers of money wherever it could be had, at home or abroad, on the faith of their quasi public securities. Now, however, the amount of national and corporate debt and of corporate property represented by bonds, certificates, notes, bills and other forms of commercial securities, which are bought and sold in all the money markets of the world, both in and out of the country under whose authority they were created, is something erroneous.

* * * * *

"Again, our own people may be dealers at home in the public or quasi public securities of a foreign government or of foreign banks or corporations, brought here in the course of our commerce with foreign Nations, or sent here from abroad for sale in the money markets of this country. As such they enter into and form part of the foreign commerce of the country. If such securities can be counterfeited here with impunity, our own people may be made to suffer by a wrong done which affects a business that has been expressly placed by the Constitution under the protection of the Government of the United States."

(1)

From the foregoing decision, it clearly appears that the reason and purpose of the Act is to protect against the counterfeiting of those representatives of value of foreign governments which are and do, in fact, circulate in our country as money. The authority of Congress to so legislate rests on its exclusive power to regulate foreign commerce and to define and punish violations of the law of Nations. The benefit thus derived is two-fold

i. e., protection of our own citizens against counterfeit foreign money and protection of the foreign Government and its people against counterfeits of its own money made within our jurisdiction. The whole idea is the preservation of the integrity of a medium of exchange.

Now, it must be very apparent, that the statute has not for its object the protection of those things which may, either arbitrarily or generically, by statutory or judicial definition of the foreign Government, be declared to constitute obligations and securities of such Government. Congress has not evidenced any legislative intent to protect against counterfeiting anything that a foreign Government may declare constitutes its obligations and securities. Neither has it evidenced an intent not to protect those instruments which, by reason of their own peculiar intrinsic nature and qualifications, constitute obligations or securities of a foreign Government or bank, but which may, nevertheless, not have been declared to be such by statutory or judicial authority of such foreign Government.

When Congress therefore declared that no person should counterfeit any "*genuine* note, bond, obligation or other security, or any part thereof, of any foreign Government, bank or corporation," it clearly meant to bring within the inhibition of the statute those things which under *our* law, would constitute notes, bonds, obligations or other securities. It would be a matter entirely without precedent, so far as we are advised, for Congress to use language, which has a definite and judicial meaning by the law of our Government and country, if it, in fact,

intended that language to have a meaning co-extensive with the statutory and judicial definition of not one foreign Government, but every foreign Government. It would be still more unreasonable to suppose, that Congress had such intent and never, at any time or place, by apt or appropriate language declared that the interpretation of the statute should depend upon the law of the foreign forum.

If the scope of our statute is determined by the foreign law, then the statute itself does not set out all the elements of the crime, but the individual must know at his peril, the rule of law existing in the various foreign governments. The law presumes that every man knows the law of this country and, therefore, holds him to strict accountability for violations thereof. But, we do not know of any rule, which assumes that men know the laws of foreign governments any more than courts know the laws of foreign governments without proof thereof. In order therefore to avoid committing a crime, the person must be assumed to know the law of this country and also the law of the foreign government, which this court and other courts many times have frequently held is entirely a question of fact.

This imports into the statute such an indefiniteness and uncertainty that the statute could not be sustained as constitutional. There is a collection of authorities in the case of *U. S. v. Armstrong*, 265 Fed. 683, on this question.

(m)

In re Green, 52 Fed. 104, it is said:

"But the act does not undertake to define what constitutes a contract, combination or conspiracy in restraint of trade and recourse must therefore be had to the common law for the proper definition of these general terms and to ascertain whether the acts charged come within the statute. We regard it as settled by the authorities that an indictment following simply the language of the act, would be wholly insufficient for the reason that the words of the statute do not, of themselves, fully, directly and correctly set forth all the elements necessary to constitute the offense intended to be punished. (Citing authorities.)

"Under the principle established by those cases, the several counts of the present indictment must be tested, not by the general recitals and averments thereof, although, in the words of the statutes, but, by the specific acts or particular facts which are alleged to have been actually done and committed by the accused. *If the particular acts or facts charged do not, as a matter of law, constitute contracts, combinations or conspiracies in restraint of trade and commerce among the several states, or a monopoly or attempt to monopolize any part of such trade, or commerce, no amount of averments and allegations that the accused engaged in a combination or made contracts in restraint of such trade or commerce or monopolized or attempted to monopolize the same, will avail to sustain an indictment.* Whether the accused is charged with an offense should be determined by the *particular acts or facts* set forth and not by the conclusions of the pleader, although asserted in the words of the statute: 'every offense consists of certain acts done or omitted under certain circumstances and, in the indictment for the offense, it is not sufficient to charge

the accused generally with having committed the offense, but all the circumstances constituting the offense must be specially set forth.' *U. S. v. Cruikshank*, 92 U. S. 542."

We think the foregoing opinion is particularly applicable to this case. The statute in the instant case denounces the counterfeiting of certain things. Those things are enumerated and named *according to common law classification*. In determining, therefore, in the particular case, whether or not an offense has been committed, regard must be had to whether or not the particular facts charged to be an offense do, in fact, under the interpretation given to the statute, under the common law, constitute such offense. It is not sufficient to allege in an indictment under Section 161, that defendant did counterfeit a certain obligation and security of the Dominion of Canada to-wit: an internal revenue stamp; such an indictment would be wholly insufficient. How then, can it be said that, when the indictment does set up the particular acts and facts which are alleged to constitute the offense and then generally, in the terms of the statute, charges the instrument therein described to be an obligation or security of the Dominion of Canada and the particular facts show that it is not an obligation or security of the Dominion of Canada, that the general allegation helps the indictment?

It is an offense under the statute to counterfeit the notes of a foreign Government, but whether the instruments described as such notes are, in truth notes, is a question of law. Likewise, it is an offense to counter-

feit the bonds of a foreign government and whether the instruments are bonds, constitutes a question of law. Whether the stamp in question is an obligation or security of the Dominion of Canada is a question of law to be determined, not according to the law of Canada, but according to the law of the United States. If it is an obligation or security as those terms are defined and understood by the common law then such fact will appear from the face of the instrument.

(n)

A consideration of the questions of fact necessary to be proved in order to show a violation of Section 161 shows that the declarations of the foreign government do not form any part of the offense. The section makes it an offense to counterfeit any "*genuine* note, bond, obligation or other security."

There are only two questions of fact to be shown. The first is that the foreign government, bank or corporation does issue a *genuine* instrument of the kind described in the indictment. This does not involve showing that that genuine instrument has been declared to be an obligation or security, or a note or bond, but simply that a genuine instrument, of the kind described, does exist.

The second question of fact to be proved is that the defendant counterfeited the genuine instrument by making the false one described in the indictment.

These are the only questions of fact arising on indictment under this section. The remaining question is one of law for the court and that is whether or not the instrument described is a note, bond, obligation or other security.

We respectfully submit that the indictment does not charge any offense under the laws of the United States.

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